

- Tuesday - off list  
- report - Ecology send  
- work - Ecology add  
for note

## Proposed settlement terms for NCC provisions

### I. EPA will:

- A. Remand its approval of the natural conditions criteria not later than DATE.
- B. The remand will include the human use allowance provisions.
- C. Not use the natural conditions criteria as the basis for any EPA-issued NPDES permits in Washington.
- D. *Continue to assist Ecology in devising an alternative approach to regulatory matters that have relied upon the NCC provisions and help to develop an orderly transition to that alternative approach.*

### II. Ecology will:

- A. Issue a Puget Sound TMDL for dissolved oxygen and nutrients by DATE.
  - 1. The TMDL will be "staged" in that it will automatically adjust the ratio of wasteload to load allocations in five-year increments, starting with wasteload allocations for each municipal sewage treatment plant that are based on use of enhanced secondary treatment and tertiary treatment. The TMDL will aim to attain natural conditions in 20 years (perhaps defined as having compliance schedules in place for point sources and BMPs in place but not fully effective for nonpoint sources). As a staged TMDL, it will also include:
    - a. A total load reduction target for each five year period, expressed as loading and a percentage of the total.
    - b. Identify total BMP<sup>1</sup> needs quantitatively, e.g., stream miles needing riparian buffers, septic systems requiring nitrogen control or sewerage.
    - c. A level of BMP adoption for each five year period that is associated with the load allocation portion of the total load reduction target and is translated into a portion of the total BMP needs quantitatively (e.g., how many stream miles will have riparian buffers at the end of the five year period).
    - d. A mechanism of assessing for each five year period whether the level of BMP adoption has been met such that wasteload allocations will remain at their initial level, i.e. a monitoring and assessment scheme.
    - e. Reduced wasteload allocations for each five year period that go into effect if BMP targets are not met.
  - 2. The geographic scope of the TMDL will be as follows:
    - a. Include compliance with freshwater DO criteria for the watershed plumes into Puget Sound, i.e., address upstream municipal point and nonpoint sources with allocations for nutrients and temperature on the basis of meeting DO criteria in Puget Sound.

<sup>1</sup> This does not address the question of BMP development timing.

- b. Need to discuss how to address watersheds – how and on what timeframe?
- 3. For nonpoint sources, the TMDL will:
  - a. Define load allocations for nonpoint sources in nutrient loads, temperature loads (for watersheds), and in quantitative best management practices based on science as necessary to meet total load reductions. In addition,
    - i. BMPs for septic systems will be based on controlling nitrogen.<sup>2</sup>
    - ii. The TMDL will allow for sewerage septic systems and switching load allocations to wasteload allocations for those loads.
    - iii. Local jurisdictions will be expected to use their ordinance authority to achieve load reductions, e.g., by adopting bans on use of lawn fertilizer. This will be established as BMPs for stormwater.
    - iv. BMPs as load allocations for logging will be based on riparian buffers needed for nitrogen control.
  - b. Load allocations will be made to the following nonpoint sources at a minimum: logging, septic systems, urban stormwater, drainage districts, agriculture.
  - c. Load allocations for septic systems will be given to municipalities, counties, special districts or other entities, whichever has legal authority in the jurisdiction. Alternatively, Ecology will establish a general NPDES permit to cover septic systems.
- 4. For point sources, the TMDL will:
  - a. Contain wasteload allocations for nutrients for all municipal sewage treatment discharges that discharge directly or indirectly to Puget Sound.
  - b. Contain wasteload allocations for nutrients for all MS4 permits that discharge directly or indirectly to Puget Sound. (These allocations need to be translated into BMPs.)
- 5. For purposes of oversight on the natural conditions predictions embodied in the initial Puget Sound TMDL, Ecology will review and revise the TMDL not later than NUMBER years following its completion.
  - a. At the point of revision, if Ecology did not previously make wasteload allocations for industrial point sources in the initial TMDL (five oil refineries, four pulp/paper mills, and one aluminum facility), it will do so in the revised 10-year TMDL.
  - b. [placeholder]
- 6. The TMDL:

<sup>2</sup>

*See, e.g.,*  
<http://www.doh.wa.gov/CommunityandEnvironment/Shellfish/EPAGrants/Denitrification>  
 (results of EPA grant to Washington Department of Health to identify reasonable septic upgrades to reduce nitrogen from septic).

- a. Will allocate 0.15 mg/L DO of the 0.2 human use allowance for: a margin of safety, future growth, predicted natural impacts (e.g., Pacific Ocean), climate change impacts, etc.
  - b. Will *not* use turbidity as a surrogate for nutrients.
  - c. Will define temperature allocation BMPs as riparian buffers in width, density, and height.
7. In order to implement the wasteload allocations for point sources, Ecology will commit to:
  - a. Re-issuing all NPDES permits for municipal wastewater treatment plants discharging to Puget Sound within NUMBER years of EPA's approval of the TMDL.
  - b. [MS4 placeholder]
- B. Limitations on Use.
  1. Ecology will agree to not use the natural conditions criteria as the basis for issuing any NPDES permits other than those pertaining to the Puget Sound DO TMDL discussed above. — *does include MHA?*
  2. [placeholder for other "sideboards"]
- C. *Ecology will use the interim period to work with EPA to make an orderly transition to another approach.*

*no immediate re-entrance  
in proposal?  
re-entrance specified here  
for EPA to re-entrance  
orderly transition?*